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WARRANTIES ON CONSUMER PRODUCTS & SERVICES

This chapter describes your rights under Maine’s laws related to warranties on products and services typically used by consumers. It contains the following sections:

- § 1. Express Warranty**
- § 2. Implied Warranty of Merchantability**
- § 3. Length of Implied Warranty**
- § 4. Breach of Implied Warranty of Merchantability**
- § 5. Implied Warranty of Fitness for a Particular Purpose**
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§ 1. Express Warranty

An *express warranty* is a clearly stated fact or promise by a seller or manufacturer that a product will perform in a certain manner for a specified time, which becomes part of the basis for the bargain between the buyer and seller.¹ Many products purchased by consumers come with a written express warranty, which could be a statement such as the product “will be free from defects in materials or workmanship” for a certain period, or “Your complete satisfaction is guaranteed.” An oral or written statement about a product’s quality, characteristics or condition can also create an express warranty, and formal words like “warrant” or “guarantee” aren’t necessary. In determining whether an express warranty was formed, a court will consider the circumstances around the agreement, including the knowledge of both parties.² There must be something more than a seller’s opinions or promotional statements about a product, however, to create an

¹ 11 M.R.S. § 2-313 (in Article 2 on “Sales,” 11 M.R.S. §§ 2-101 through 2-725) in Maine’s Uniform Commercial Code.

² *Courtney v. Bassano*, 1999 ME 101, ¶ 11, 733 A.2d 973. See also *Maine Farmers Exchange v. McGillicuddy*, 1997 ME 153, ¶ 8, 697 A.2d 1266 (upholding the trial court’s finding of an express warranty that the seed potatoes sold by the defendant were to be Norwis potatoes [rather than the mixture of Allegany and Norwis potatoes that plaintiff received], based on the plaintiff’s communication to the defendant “both of the particular kind of seed desired and the particular purpose for which the seed was required.”).

express warranty.³

§ 2. Implied Warranty of Merchantability

In addition to any express warranty given by the seller or manufacturer, Maine’s Uniform Commercial Code (“UCC”) provides automatic warranty protection on many products sold to consumers through an *implied warranty of merchantability*.⁴ All new and used “consumer goods” – products that are purchased for family, household or personal use (including mobile homes, clothing, new cars, furniture, appliances, sports equipment and more) - are warranted by law to be fit for the ordinary purpose for which such goods are used. They can’t be seriously defective. For example, a washing machine must be fit for washing clothes – it must be able to do the job that washing machines ordinarily do and to *last* for as long as washing machines ordinarily last. A person receiving a consumer product as a gift would also receive whatever express and implied warranties apply.

Pursuant to 11 M.R.S. § 2-314, two important questions to ask in determining whether a consumer product is merchantable are:

1. Is the product “fit for the ordinary purposes for which such a product is used”? and
2. Does the product “pass without objection in the trade” (e.g., would most people find the product acceptable)?

§ 3. Length of Implied Warranty

Maine’s implied warranty of merchantability applies automatically to any new or used consumer product for *up to 4 years from the date of purchase*, depending on the product’s “useful life” (life expectancy). For example, you purchase a highly rated food processor that comes with a 2-year express warranty, but your warranty protection doesn’t end after 2 years. Assuming proper care, the food processor should last for at least 4 years, which is the length of its implied warranty of merchantability.⁵ If the useful life of the food processor is more than 4 years, the length of its implied warranty is still 4 years, which is the upper limit of time for any implied warranty of merchantability.

If a product’s useful life is less than 4 years, the implied warranty for that product is the length of its useful life. For example, a soccer ball that you played with every day is probably at the end of its useful life when, 2 years after you bought it, it won’t inflate anymore. The length of the implied warranty for the soccer ball is 2 years.

§ 4. Breach of Implied Warranty of Merchantability

In general, the implied warranty of merchantability has been *breached* (violated) if you purchased a new or used consumer product and:

³ “[A]n affirmation merely of the value of the goods or a statement purporting to be merely the seller’s opinion or commendation of the goods does not create a warranty.” 11 M.R.S. § 2-313(2). See *McLaughlin v. Denharco, Inc.*, 129 F.Supp.2d 32, 39 (D. Me. 2001) (“Sales material that only promotes the ‘value’ of the product is considered shop talk and not actionable under section 2-313.”).

⁴ 11 M.R.S. § 2-314.

⁵ 11 M.R.S. § 2-725.

- A. The product is so poorly designed or made that it is seriously defective and its use is impaired;
- B. You haven't abused the product by using it improperly or by failing to follow the directions; and
- C. The product was purchased no more than 4 years ago and it's still within its expected useful life, and not simply worn out.

How long is a product's useful life? It's often the subject of debate, but a little research can help you make your case. For example, in February of 2007, the National Association of Home Builders/Bank of America Home Equity published a report called "Study of Life Expectancy of Home Components" which may be used as a general guideline. You can find this report on-line at:

<https://www.interstatebrick.com/sites/default/files/library/nahb20study20of20life20expectancy20of20home20components.pdf>. You can also find the repair records for many products on the web site for *Consumer Reports*. You might also try asking sellers of the product.

If you can prove the three elements above, you have a good argument that you're entitled to your incidental and consequential damages for the breach of your implied warranty, e.g., free repairs by either the manufacturer or the seller.⁶

§ 5. Implied Warranty of Fitness for a Particular Purpose

In addition to the implied warranty of merchantability, Maine law also provides automatic warranty protection through an *implied warranty of fitness for a particular purpose*.⁷ This warranty protects you if the seller knows that you're purchasing a product for a particular purpose that's outside its ordinary uses, and you rely on the seller's promise that the product is suitable for that purpose. If the item is inadequate for your purpose, your warranty of fitness for a particular purpose has been breached.

§ 6. Implied Warranties Can't Be Denied (Except on Used Cars)

If you closely examine the written express warranty on your new car or other consumer product, you'll probably see in small print a statement such as, "Your rights may vary from state to state: check your own state law for additional rights," or "Some states prohibit limitation of warranty rights or remedies." This statement is required to be there to alert you to the fact that, as a consumer living in Maine, you have additional implied warranty rights beyond the written express warranty. If the written warranty doesn't have this statement, it may violate Maine law.

In Maine, a seller or manufacturer is prohibited from *disclaiming* (denying) an implied warranty on any consumer product or service; and any language used by the seller or manufacturer to exclude or modify an implied warranty is unenforceable.⁸ Further, a seller or manufacturer who sells goods to consumers in Maine can't limit a consumer's right to incidental or consequential damages for breach of the implied warranty for a defective consumer product.⁹ The only exception to the rule against disclaiming an implied warranty applies to the sale of used cars. If a dealer sells a used car to a consumer "as is," the consumer

⁶ 11 M.R.S. 2-715. A "free" repair means that you shouldn't have to pay a "deductible," which would likely be an illegal limitation of your remedies for breach of the implied warranty, pursuant to 11 M.R.S. § 2-316(5).

⁷ 11 M.R.S. § 2-315.

⁸ 11 M.R.S. § 2-316(5).

⁹ 11 M.R.S. §§ 2-714(3), 2-715, and 2-316(5)(a).

receives no implied warranty of merchantability.¹⁰

Except for used cars, any other new or used consumer product that's sold in Maine "*as is*" means that the seller isn't giving an express warranty on the product, but it still comes with an implied warranty of merchantability *if the seller is a merchant with respect to products of that kind*. For example, a table you buy at a yard sale doesn't come with an implied warranty because the seller isn't a merchant in the business of selling used furniture. However, a table you buy from a store that sells furniture is sold with an implied warranty of merchantability because the seller is a merchant of such products.

§ 7. "Freezing" Your Warranty Rights

As soon as you know that the product you bought has a possible defect, you should send a written complaint to the seller or manufacturer, since this has the effect of "*freezing*" (preserving) whatever express or implied warranty rights you may have at the time of the complaint. Keep a copy of your complaint to prove when you first complained. If you complain during the warranty period and the seller can't repair the product before the warranty expires, you've frozen your warranty rights and the seller can't refuse to make repairs because the warranty has expired.

§ 8. Both Seller and Manufacturer Are Responsible

Both the seller and manufacturer are responsible for any incidental and consequential damages (e.g., they should provide you with free repair or replacement) if your implied warranty of merchantability is breached.¹¹ For example, if you buy a television from a local store, both the manufacturer and the seller are responsible under the implied warranty if it has a defect. This is true for new cars, appliances, and all other consumer products.

We recommend that you complain first to the seller if your product is defective, damaged, or doesn't work properly. The seller may admit that the item is defective but tell you to contact the manufacturer for repairs. This is improper because the seller can't disclaim responsibility. You should insist that the seller arrange for the repairs with the manufacturer. If you can't resolve the problem with the seller, contact the manufacturer and get them both involved. The seller or manufacturer may want to charge you for a service call if the product must be seen at your home. If the problem was caused by normal wear and tear or improper use of the product, the implied warranty won't apply and the service charge is proper. But if the problem is covered by the implied warranty, you shouldn't be required to pay a service charge.

If you can't resolve your claim with either the seller or manufacturer and you're confident that the problem occurred because of a substantial defect, you should contact the Attorney General's Consumer Protection Division to see if your complaint can be resolved through our free voluntary mediation service. If it can't be resolved through mediation, you may consider bringing legal action against either the seller or manufacturer or both, but you should consult with an attorney before deciding to sue.

¹⁰ 10 M.R.S. § 1473 and 11 M.R.S. 2-316(5). The consumer also receives no express warranty if the dealer sells the used car "as is."

¹¹ 11 M.R.S. §§ 2-316(5), 2-318 (lack of privity no bar), and 2-715.

§ 9. Draft Letter Requesting Implied Warranty Repair

If you were sold a seriously defective consumer product that's covered by Maine's implied warranty of merchantability, you can use the draft letter below to send to the manufacturer or the seller or both to request that the product be repaired.

Date: _____

RE: Maine Implied Warranty Repair

Dear _____:

On _____, 20__ I purchased a _____ at _____.
Enclosed are copies of my records (receipts, guarantees, cancelled checks, and model and serial numbers). Unfortunately, your product hasn't performed well and is seriously defective in the following ways:

The defect wasn't caused by my treatment of it, nor have I used the product so often that it's worn out and exceeded its useful life.

In Maine when consumers are sold seriously defective items that they purchased for personal, family or household use, the Maine implied warranty of merchantability (11 M.R.S. § 2-314) can provide the right to a free repair. Under this law, both the seller and the manufacturer are responsible for the free repair if the consumer was sold a seriously defective item. Neither the seller nor the manufacturer can disclaim this warranty.

I'm requesting that you arrange for this item to be repaired at no cost to me. You can obtain more information on Maine's implied warranty of merchantability in the chapter on warranties on consumer products and services in the *Maine Consumer Law Guide*, which can be found on-line at the Maine Attorney General's web site.

I look forward to your prompt reply and a resolution of this problem.

Sincerely,

Name

Address

Telephone

E-mail

§ 10. Implied Warranties Apply to Services

The implied warranty provisions in Maine’s UCC also apply to services.¹² The Maine Law Court has also confirmed the existence of an implied “duty to perform skillfully, diligently, and in a workmanlike manner” in a contract for work or services. *Cannan v. Bob Chambers Ford*, 432 A.2d 387, 389 (Me. 1981). A contractor breaches the implied warranty of good workmanship if he or she fails to perform work in a “reasonably skillful and workmanlike manner.” *Wimmer v. Down East Properties, Inc.*, 406 A.2d 88, 92 (Me. 1979).

§ 11. Transfer of Express and Implied Warranty Rights

When a used product is sold, the original buyer’s express and implied warranties may pass to a subsequent buyer of the product if that person is someone “whom the manufacturer, seller or supplier might reasonably have expected to use, consume or be affected by the goods.”¹³ Since there are businesses that sell used consumer products, there’s a strong argument that, within the meaning of this language, the buyer of a used product is a foreseeable user, and should receive the benefit of any unexpired express and implied warranties.

§ 12. Service Contracts (“Extended Warranties”)

Consumers are sometimes asked to buy a service contract when they purchase a product. Typically, a service contract is a contract that promises to repair the product in exchange for a fee. Though often called an “extended warranty,” a service contract isn’t a warranty. Unlike a warranty, which is included in the product’s price, you must pay extra for a service contract, and you may be required to pay a “deductible” (a specified amount of money that you must pay) before a claim for repair is paid by the company with which you have the service contract. If you have a good warranty, you probably don’t need to buy the protection that a service contract offers. In fact, you may be buying coverage you already have under your express or implied warranty.

Before buying a service contract, read all the terms carefully so you know what parts and repairs are covered and for how long. For an expensive major appliance that you expect to use for at least 10 years, it might make sense to buy a service contract. However, buying a service contract to repair a TV or other electronic device may be a bad idea because changes in technology may have made your product obsolete. As an alternative to buying a service contract, some consumer advocates recommend putting the money that you’d spend for a service contract into a savings account so that you can pay for the repair or replacement of the product yourself when the need arises.

§ 13. Online or Mail Order Purchases

In general, pursuant to Maine’s long-arm statute,¹⁴ Maine consumers can enforce warranty violations

¹² 11 M.R.S. § 2-316(5), which prohibits manufacturers and sellers from attempting to exclude or modify any implied warranties on “consumer goods *and services* (emphasis added).”

¹³ 11 M.R.S. § 2-318.

¹⁴ 14 M.R.S. § 704-A.

against out-of-state sellers that sold products to them online or by catalog.¹⁵ If you're unable to resolve your warranty complaint with a seller that has no physical store within Maine, we recommend that you read the chapter in the *Maine Consumer Law Guide* on "How to Resolve a Consumer Complaint" before you decide to file a lawsuit.

§ 14. Statute of Limitations for Breach of Warranty

A lawsuit based on the breach of an express or implied warranty must meet all statute of limitation and notice requirements but, in general, it should be brought within 4 years of the sale.¹⁶ The statute of limitations may be longer, however, where "a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered."¹⁷ For example, if you buy a new car that comes with a 5-year express warranty on the transmission, you can bring a legal action to enforce the express warranty on a defective transmission for up to 5 years from the date of sale.

§ 15. Damages for Breach of Warranty

If a new or used product can't be repaired and you don't want to revoke acceptance,¹⁸ you can bring a legal action for your *damages* (losses), but you should first consult with an attorney. The basic measure of damages for a breach of warranty is the difference between the value of goods accepted and the value the goods would have had if they'd been delivered in good condition.¹⁹ In addition, you may also be eligible for incidental damages²⁰ and consequential damages.²¹ The UCC also allows a buyer to notify the seller that the contract has been breached and that the buyer will *set off* (deduct) reasonable damages from the payments he or she still owes.²² It is important that consumers who have been injured by a seller's or manufacturer's negligence take reasonable steps to *mitigate* (lessen) their damages.²³

¹⁵ "The jurisdictional reach of Maine's long-arm statute. . . is limited only by the due process clause of the fourteenth amendment." *Electronic Media Intern. v. Pioneer Communications of America, Inc.*, 586 A.2d 1256, 1258 (Me. 1991). The plaintiff has the burden of proving that Maine has an interest in providing a means of redress against nonresidents who incur obligations to Maine consumers, and that the defendant seller has sufficient "minimum contacts" with Maine to make it reasonable to require the seller to defend a suit brought in Maine. The burden then falls on the seller to show that the Maine court's exercise of jurisdiction is improper because it doesn't comport with "traditional notions of fair play and substantial justice." *Electronic Media*, 586 A.2d at 1258-1259.

¹⁶ 11 M.R.S. § 2-725.

¹⁷ 11 M.R.S. § 2-725.

¹⁸ See the chapter in the *Maine Consumer Law Guide* on "Return or Rejection of Consumer Products or Services."

¹⁹ 11 M.R.S. 2-714(2).

²⁰ 11 M.R.S. § 2-715(1). Incidental damages resulting from the breach would include reasonable expenses for the care of a defective product. For example, if you were sold a defective new car and it cost you \$70 to tow it to the dealer for repairs, the cost of the tow would be an incidental damage.

²¹ 11 M.R.S. § 2-715(2). Consequential damages include damages that could not reasonably be avoided and are a direct result of the breach. For example, if you were sold a defective new car, which was your only available transportation because you live in a rural area with no bus service, the cost of a rental vehicle would be a consequential damage.

²² 11 M.R.S. § 2-717; *Cianbro Corp. v. Curran-Lavoie, Inc.*, 814 F.2d 7, 13 (1st Cir. 1987).

²³ See *Searles v. Fleetwood Homes of Pa., Inc.*, 2005 ME 94, ¶ 38, 878 A.2d 509.